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January 31, 2019

VIA ECF

Hon. Katherine Polk Failla
United States District Judge
United States District Court
Southern District of New York
40 Foley Square
New York, NY 10007

Re: *Hernandez, et al. v. Muzzarella Inc., et al*
Case No. 17-cv-6164

Dear Judge Failla:

This office represents Plaintiff Victor Hugo Ortega Hernandez (“Plaintiff”) in the above-referenced matter. We submit this letter to respectfully request that the Court approve the settlement reached between Plaintiff and Defendants Muzzarella Inc. (d/b/a Muzzarella Pizza) and John Russo (“Defendants” and together with Plaintiff, the “Parties”).

In accordance with Your Honor’s direction at the January 23, 2019 settlement conference, the parties are not submitting a full fairness letter, since Your Honor presided over the settlement conference. However, Plaintiff’s counsel will provide Your Honor with details regarding their requested attorneys’ fees below. A copy of the parties’ executed settlement agreement is attached hereto as **Exhibit A**.

The Plaintiff’s Attorneys’ Requested Attorneys’ Fees

The Parties have agreed to settle this matter for the total sum of Sixty-Two Thousand Dollars (\$62,000.00). Under the settlement, Plaintiff’s counsel will receive Twenty-Thousand Six-Hundred Sixty-Six Dollars and Sixty Seven Cents (\$20,666.67) from the settlement fund as attorneys’ fees and costs. This represents one-third of the Settlement amount, a reduction in fees from what is identified in the Plaintiff’s retainer agreement, which provides that forty percent of the Plaintiff’s recovery will be retained by the firm.

The amount provided to the Plaintiff’s counsel under the settlement is fair and reasonable as it is consistent with the range of fees typically awarded in cases in this Circuit. *See Castaneda v. My Belly’s Playlist LLC*, No. 15 Civ. 1324 (JCF) (S.D.N.Y. Aug. 17, 2015) (Francis, M.J.) (awarding the plaintiffs’ attorneys a contingency fee of one-third to account for risks in litigation); *see also Calle v. Elite Specialty Coatings Plus, Inc.*, 2014 U.S. Dist. LEXIS 164069 at *9 (E.D.N.Y. Nov. 19, 2014) (“A one-third contingency fee is a commonly accepted fee in this Circuit”). In light of the nature of the issues herein, and the extensive negotiations necessary to reach the agreed-upon settlement, Plaintiffs’ requested award is reasonable. *See Alleyne v. Time*

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Moving & Storage Inc., 264 F.R.D. 41, 60 (E.D.N.Y. 2010); *see also* McDaniel v. Cnty. of Schenectady, 595 F.3d 411, 417 (2d Cir. 2010).

Given the Plaintiff's counsel's significant experience representing plaintiffs in New York City in wage and hour litigation, the Plaintiff's counsel was able to obtain a favorable result during a settlement conference before Your Honor on January 23, 2019.

Attached hereto as **Exhibit B**, are the Plaintiff's attorneys' time records. A brief biography of each attorney who performed billed work in this matter is as follows:

- Mr. Faillace is the Managing Member of Michael Faillace & Associates, P.C, and has been in practice since 1983. From 1983 to 2000, he was in-house Employment Counsel with International Business Machines Corporation (IBM). Mr. Faillace taught employment discrimination as an Adjunct Professor at Fordham University School of Law since 1992 and at Seton Hall University Law School from 1995 to 1998, and is a nationally-renowned speaker and writer on employment law. He also is the author of the ADA, Disability Law Deskbook: The Americans with Disabilities Act in the Workplace, published by Practising Law Institute (PLI), and other employment law publications and presentations.
- Sara Isaacson is an associate at Michael Faillace & Associates, P.C. She graduated from Benjamin N. Cardozo School of Law in 2015. During law school, Ms. Isaacson worked as a law clerk at the employment firm of Virginia & Ambinder, LLP. After graduating law school, Ms. Isaacson worked at a commercial litigation firm which also specialized in the defense of wage and hour litigation. Since joining Michael Faillace & Associates, P.C. in May 2017, she has been responsible for all aspects of the firm's employment docket in federal court.

The requested attorneys' fees and costs in the Parties' settlement are reasonable under the circumstances and the Plaintiff has agreed to these fees and costs by agreeing to the settlement amount. As a result, the fees should be approved.

We thank the Court for its consideration in this matter.

Respectfully Submitted,

/s/ Michael Faillace
Michael Faillace, Esq.
Michael Faillace & Associates, P.C.
Attorneys for Plaintiff

cc: Joshua Levin-Epstein, Esq. (via ECF)
Attorney for Defendants